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Before the
Federal Communications Commission
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In Re Applications of)	WT Docket No. 97-199
)	
Westel Samoa, Inc.)	File No. 00560-CW-L-96
)	
For Broadband Block C Personal)	
Communications Systems Facilities)	
)	
and)	
)	
Westel, L.P.)	File Nos. 00129-CW-L-97
)	00862-CW-L-97
For Broadband Block F Personal)	00863-CW-L-97
Communications Systems Facilities)	00864-CW-L-97
)	00865-CW-L-97
)	00865-CW-L-97

To: The Commission

**WIRELESS TELECOMMUNICATIONS BUREAU'S OPPOSITION
TO MOTION TO CONSOLIDATE**

The Chief, Wireless Telecommunications Bureau (Bureau), by his attorneys, now opposes the "Motion to Consolidate" filed by Anthony T. Easton on February 11, 1998.

I. BACKGROUND

1. On September 9, 1997, the Commission released a *Memorandum Opinion and Order, Hearing Designation Order, Notice of Opportunity for Hearing, and Order to Show Cause (Order)*.¹ This *Order* designated for hearing three issues concerning the conduct of Quentin

¹ *Westel Samoa, Inc.*, 12 FCC Rcd 14057 (1997).

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Breen and Anthony Easton, who were two registered bidding agents for PCS 2000, L.P. (PCS 2000). It relates to a mistaken bid of \$180 million that PCS 2000 made for the Norfolk, Virginia BTA during the Commission's PCS broadband C block auction. Two issues seek to determine whether Quentin Breen misrepresented facts or lacked candor before the Commission concerning the PCS 2000 bidding error, and whether Mr. Breen possesses the requisite character qualifications to be a Commission licensee. The remaining issue requires Mr. Easton to show cause why he should not be barred from holding any Commission license or to participate in any future Commission auction because of misrepresentations Mr. Easton made concerning the mistaken bid.

2. On October 6, 1997, Mr. Easton filed a *Petition for Reconsideration* (Easton petition) with the Commission in which he requested that it vacate its show cause order for jurisdictional and due process reasons.² On October 16, 1997, the Bureau filed an opposition to the Easton petition,³ requesting that the Commission deny it, and subsequently, on November 14, 1997, PCS 2000, now known as ClearComm L.P. (ClearComm), filed comments supporting the

² *Petition for Reconsideration* of Anthony T. Easton, WT Docket 97-199 (filed Oct. 6, 1997).

³ *Wireless Telecommunications Bureau's Opposition to Petition for Reconsideration*

Bureau's opposition.⁴ Mr. Easton replied to both these pleadings.⁵ All of these pleadings are currently pending before the Commission.

3. On January 22, 1997, the Commission released two orders imposing a forfeiture against PCS 2000 for misrepresentations and lack of candor⁶ but concluding that PCS 2000 had the qualifications necessary to be a Commission licensee and granting the PCS 2000 applications, subject to certain conditions.⁷ In granting the applications, the Commission, *inter alia*, denied a petition to deny filed by the Susan D. Easton Trust (SDE Trust) on the grounds that the Trust lacked standing and that none of the SDE Trust's allegations warranted a hearing. On February 21, 1997, the SDE Trust filed a *Petition for Reconsideration*⁸ (SDE petition) of that action, which is currently pending before the Commission.

4. On November 13, 1997, ClearComm filed a *Petition to Intervene* (ClearComm petition)⁹ with the Presiding Judge in the Westel proceeding, which the Bureau supported.¹⁰

⁴ *Comments of ClearComm, L.P.*, WT Docket No. 97-199 (File No. 00560-CW-L-96) (November 14, 1997).

⁵ *Reply to Wireless Telecommunications Bureau's Opposition to Petition for Reconsideration*, WT Docket No. 97-199 (Oct. 24, 1997), and *Response to Comments of ClearComm, L.P.*, WT Docket No. 97-199 (Dec. 4, 1997).

⁶ *PCS 2000, L.P.*, 12 FCC Rcd 1703 (1997) (*PCS 2000 NAL*).

⁷ *PCS 2000, L.P.*, 12 FCC Rcd 1681 (1997).

⁸ *Petition for Reconsideration*, File Nos. 00414-CW-L-96 *et al.* (filed Feb. 21, 1997).

⁹ *Petition to Intervene*, WT Docket No. 97-199 (Nov. 13, 1997).

When the Presiding Judge denied ClearComm's petition on January 16, 1998,¹¹ ClearComm then filed an *Application of Review*¹² of that denial, which is also currently pending before the Commission.

III. DISCUSSION

5. Mr. Easton seeks to have the Commission consolidate the three pleadings noted above. Mr. Easton argues that all three pleadings relate to the PCS 2000 bidding error, and therefore should be consolidated to: "promote administrative efficiency, . . . conduce to a just resolution of the interrelated issues, . . . and ensure the consistency of the Commission's decisions . . ."¹³

6. Initially, the Bureau must point out that the Easton petition and ClearComm's application for review are both pending before the Commission in the same docket. With respect to those two pleadings, therefore, consolidation is unnecessary. Indeed, Mr. Easton fails to make clear exactly what form of relief he seeks under the guise of "consolidation." If Mr. Easton is merely seeking to have the Commission informally consider any relationship between the three pleadings when the Commission decides the matters in question, such a request would

¹⁰ *Wireless Telecommunications Bureau's Comments in Support of Petition to Intervene*, WT Docket No. 97-199 (Nov. 24, 1997).

¹¹ *Memorandum Opinion and Order*, FCC 98M-3 (released Jan. 16, 1998).

¹² *Application for Review*, WT 97-199 (File No. 00560-CW-L-96) (Jan. 26, 1998).

¹³ Motion at p. 5.

not be objectionable. Mr. Easton, however, invokes Section 1.227 of the Commission's Rules, which is a specific procedure used in *hearing* proceedings.

7. The Bureau certainly supports the concept of consolidation of interrelated matters if it is appropriate. Here, however, the Bureau submits that consolidation is not appropriate for several reasons. First, while Section 1.227(a)(1) of the Commission's Rules deals with consolidation of matters "for hearing," no showing has been made that a hearing is required with respect to the SDE petition or ClearComm's application for review. Indeed, the Commission has already made the determination that there is no need for a hearing to determine whether the PCS 2000 applications can be granted, the subject of the SDE petition. Second, the SDE petition does not fit within the parameters of Section 1.227(a)(1) because it does not involve the "same applicant or involve substantially the same issues." The question of whether the PCS 2000 has the qualifications necessary to be a Commission licensee is a different issue from whether Quentin Breen has those qualifications.

8. Third, with respect to the Easton petition, Mr. Easton's instant request for consolidation is inconsistent with the Easton petition. While Mr. Easton argued in the petition for reconsideration that the *Order to Show Cause* should be dismissed, and no hearing should be held on the terms contained in the *Order*, he now seeks consolidation of that pleading "for hearing." Finally, with respect to ClearComm's application for review, as stated above, Mr. Easton has not even attempted to explain why a hearing is needed.

9. Mr. Easton's consolidation motion appears to be a vehicle for him to reargue the proposition that the Commission violated his due process rights by concluding in the *PCS 2000 NAL* that he misrepresented facts or lacked candor. As the Bureau demonstrated in its opposition to the Easton petition, Mr. Easton waived that argument by not filing a timely petition for reconsideration of the *PCS 2000 NAL*, and, in any event, the Commission's action did not violate any due process rights to which Mr. Easton was entitled.

10. Accordingly, for the reasons given above, the *Motion to Consolidate* should be denied.

Respectfully Submitted,

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February 23, 1998

CERTIFICATE OF SERVICE

I, Shelia Foster, a secretary in the Enforcement and Consumer Information Division, Wireless Telecommunications Bureau, certify that I have, by first class U.S. mail, this 23rd day of February 1998, sent copies of the foregoing "Wireless Telecommunications Bureau's Opposition to Motion to Consolidate" to:

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